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OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF DELAWARE
No. 12-IIB08
June 8, 2012

SUPPLEMENTAL OPINION
TO
ATTORNEY GENERAL OPINION NO. 12-IIB05

Opinion By:

Kent Walker, Deputy Attorney General
Department of Justice

and

Lawrence W. Lewis, State Solicitor
Department of Justice

OPINION

This Opinion serves to supplement this Office's opinion dated March 27, 2012. In that opinion we found that the Kent County Society for the Prevention of Cruelty to Animals ("KCSPCA") is a "public body" under 29 *Del. C.* § 10002(c), and thus subject to the 29 *Del. C.* § 10004 Freedom of Information Act ("FOIA") Open Meeting requirements. *See Del. Op. Atty. Gen.* 12-IIB05 (March 27, 2012). The March 27 Opinion concluded the KCSPCA met the criteria for a "public body" as the KCSPCA was a body established and specifically empowered by the General Assembly. The Opinion suggests that the KCSPCA's certificate of incorporation and status as a not-for-profit organization receiving grant-in aid are relevant to the "public body" analysis. Upon further review, we find that the corporate status of KCSPCA is not germane to our initial determination that the KCSPCA is a "public body." This Opinion clarifies that, for the

purposes of the FOIA Open Meeting requirement, the KCSPCA is a “public body” under 29 *Del. C.* § 10002(c) because the KCSPCA was established and empowered with statutory regulatory powers by the General Assembly.

ANALYSIS

As stated in the March 27 Opinion, the term “public body” is defined under 29 *Del. C.* § 10002(c). Specifically, a “public body” is any regulatory, administrative, advisory, executive, appointive or legislative body of the State or any body otherwise empowered by any state governmental entity charged to make investigations. *Id.*

Our analysis reveals that KCSPCA clearly meets these criteria to qualify as a “public body” because it is empowered to undertake regulatory functions of the State and conduct investigations.¹ The General Assembly, specifically under 3 *Del. C.* § 7902, authorized the KCSPCA to enforce “all laws which are enacted for the protection of dumb animals,” and vested a wide range of law enforcement powers in KCSPCA in matters related to the cruelty to animals. The KCSPCA may institute and prosecute cases relating to cruelty to animals. 3 *Del. C.* § 7903. Fines, penalties and forfeitures collected as a result of such prosecutions accrue to the KCSPCA. *Id.* The KCSPCA is authorized to execute search and arrest warrants “issued under or by virtue of the several laws in relation to cruelty to animals . . . by any agent appointed by either the Delaware or Kent County Society for the Prevention of Cruelty to Animals.” 29 *Del. C.* § 7904.²

The KCSPCA is a “public body” by virtue of the General Assembly, as a “state governmental entity,” empowering the KCSPCA with these law enforcement functions to actively enforce the animal cruelty and animal protection laws. *See* 29 *Del. C.* § 10002(c). As an agency empowered by the General Assembly, to perform regulatory functions under Chapter

¹ The mandate to enforce necessarily implies a corresponding duty to make investigations. In other words, authority to enforce cannot be exercised without authority to make investigations.

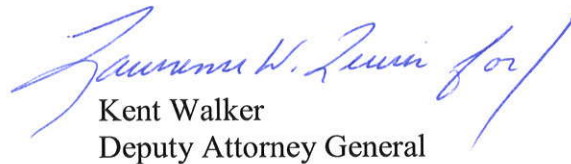
² The KCSPCA may also seize and impound animals alleged to have committed acts of cruelty. 29 *Del. C.* § 7905.

79 of Title 3 of the Delaware Code, the KCSPCA is a “public body” for purposes of the FOIA open meeting laws.

CONCLUSION

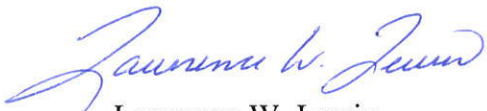
For these reasons, we determine that the KSCPCA, is a “public body,” as defined by FOIA, specifically because, as a regulatory arm of the State, it was established and empowered by the General Assembly. Accordingly, it must comply with all the open meeting requirements of FOIA, including public access to the meeting of its board of directors or trustees.

Very truly yours,



Kent Walker
Deputy Attorney General

Approved by:



Lawrence W. Lewis
State Solicitor